

# DEPARTMENT of AGRICULTURE and NATURAL RESOURCES

JOE FOSS BUILDING 523 E. CAPITOL AVE PIERRE SD 57501-3182 danr.sd.gov

October 27, 2022

### NOTICE OF HEARING

TO:

Susan Anderson

Petitioners

Elk Mountain Water Users Assn. Inc.

(see attached list dated October 27, 2022)

PO Box 6062 Custer SD 57730

Ann Mines Bailey, Assistant Attorney General

1302 East Highway 14, Suite 1

Pierre SD 57501-8501

FROM:

Eric Gronlund, Chief Engineer

Eric Grenlund SD DANR, Water Rights Program

SUBJECT:

Notice of Hearing on Water Permit Application No. 2850-2, Elk Mountain Water Users

Association Inc.

Petitions in opposition have been filed in the matter of Water Permit Application No. 2850-2 in response to the Notice of Application published in the Rapid City Journal and Custer County Chronicle on September 28, 2022. This notice schedules a hearing on Application No. 2850-2 before the South Dakota Water Management Board.

Water Permit Application No. 2850-2 proposes to appropriate up to 145 acre-feet of water annually at a maximum pump rate of 0.333 cubic feet of water per second from one well to be completed into the Madison Aquifer (approximately 1,570 feet deep) located in the NW 1/4 NW 1/4 Section 21-T4S-R1E to supply a water distribution system as well as commercial use and fire protection. The proposed system will serve users within an approximate ten-mile radius of the well which includes portions of T3S-R1E, T3S-R2E, T4S-R1E, T4S-R2E, T5S-R1E, T5S-R2E and T6S-R1E (Custer County SD) and T44N-R61W, T44N-R60W, T43N-R61W, T43N-R60W, T42N-R61W, T42N-R60W, T41N-R60W (Weston County, WY). Water will also be provided to the Highlands Volunteer Fire Department and available for purchase by retail customers via a single bulk dispensing station.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends approval of Application No. 2850-2 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board.

The Water Management Board will conduct a hearing to consider Application No. 2850-2 at 10:45 AM (Central Time), on Wednesday, December 7, 2022, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The time is an estimate and may be delayed due to prior items on the agenda. Notice will be provided if there is a change in the time or date of the hearing.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application after it reaches a conclusion based on the facts presented at the public hearing.

The December 7, 2022 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition opposing the application. A request for an automatic delay must be filed by **November 7, 2022**. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol Ave, Pierre SD 57501." If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided regarding the time, date, and location.

The hearing is an adversary proceeding and any party has the right to be present at the hearing and may be represented by legal counsel. As a legal entity (Elk Mountain Water Users Association Inc.), the applicant, is required to be represented by legal counsel in this administrative proceeding. These and other due process rights will be forfeited if they are not exercised at the hearing. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Enclosed is a copy of the report, recommendation, affidavits of publication, and the petitions filed in the matter of Water Permit Application No. 2850-2. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. Notices, orders, other pleadings, and comments filed in this matter are posted on DANR's contested case page at https://danr.sd.gov/public/ContestedCase.aspx. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." If you intend to participate in the hearing, you are encouraged to review these documents prior to the hearing.

Contact Ron Duvall at the above Chief Engineer's address to request a copy of the staff report, recommendation, application, or other information related to the application. Notice is given to individuals with disabilities that the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Pontious, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at Brian.Pontious@state.sd.us as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is November 7, 2022. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2Λ-12, 46-2Λ-14, 46-2Λ-15, 46-2Λ-20, 46-2Λ-21, 46-2Λ-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ΛRSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

Questions regarding the hearing process may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

## **Petitioner List**

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.
October 27, 2022

### **PETITIONERS**

Daniel Norman Stearns 25499 Dewey Rd Edgemont SD 57735

Dalton Stearns 10321 Two Track Trl Edgemont SD 57735

Travis Paulton 10693 Pass Creek Rd Edgemont SD 57735 William and Susan Paulton 10666 Pass Creek Rd Edgemont SD 57735

Jim and Charel Pitts 25385 Gillette Canyon Rd Newcastle WY 82701

### CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated October 27, 2022, with attachments regarding Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc., was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on October 27, 2022.

Susan Anderson Elk Mountain Water Users Assn. Inc. PO Box 6062 Custer SD 57730

### Petitioners as follows:

Daniel Norman Stearns 25499 Dewey Rd Edgemont SD 57735

Dalton Stearns 10321Two Track Trl Edgemont SD 57735

Travis Paulton 10693 Pass Creek Rd Edgemont SD 57735 William and Susan Paulton 10666 Pass Creek Rd Edgemont SD 57735

Jim and Charel Pitts 25385 Gillette Canyon Rd Newcastle WY 82701

### Above also Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General 1302 East Highway 14, Suite 1 Pierre SD 57501-8501

Vickie Maberry

Water Rights Program, DANR

STATE OF SOUTH DAKOTA

SS

**COUNTY OF HUGHES** 

Sworn to, before me, this 27th day of October, 2022.

Karen Schlaak Notary Public

My Commission expires April 1, 2025

KAREN SCHLAAK SON NOTARY PUBLIC State of South Dakota